

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Classy Kid, Inc.

Plaintiff,

v.

Dixon Ticonderoga Company,

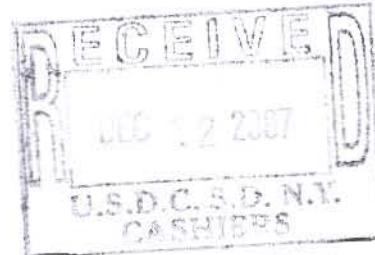
Defendant.

07 CV 11175

CIVIL COMPLAINT

-CV-

JURY DEMANDED



The Parties

1. Plaintiff is a Nevada corporation with a principal place of business at 4150 North Pecos, Unit B Las Vegas, NV 89115.

2. Defendant, upon information and belief, is a Florida company with a principal place of business at 195 International Parkway, Heathrow FL 32746-5036.

Nature of the Action

3. This action is brought under sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

Jurisdiction and Venue

4. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper under 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(c).

Facts

6. Plaintiff is a manufacturer and/or supplier of children's products including health, safety, hygiene and related products.

7. Among its other products, Plaintiff's products include "CrayAngle" brand triangular crayons.

8. Plaintiff markets and sells its "CrayAngle" brand triangular crayons in the distinctive, triangular packaging depicted in Figure 1. Plaintiff has sold its "CrayAngle" brand triangular crayons in the distinctively shaped packaging continuously since late 2006.

9. Plaintiff has sold approximately 1 million or more units of its "CrayAngle" brand triangular crayons in the distinctively shaped packaging.



FIGURE 1

10. The triangular packaging depicted in Figure 1 is inherently distinctive and/or has acquired distinctiveness through Plaintiff's extensive sales. Upon information and belief, the

triangular packaging depicted in Figure 1 denotes a single source of goods in the minds of consumers.

11. Upon information and belief, Defendant sells “My Hold Right Pencil” brand pencils marketed for use by children. Upon information and belief, Defendant sells its “My Hold Right Pencil” brand pencils in the triangular packaging depicted in Figure 2.



FIGURE 2

12. Upon information and belief, Defendant first began selling its “My Hold Right Pencil” brand pencils in or about August, 2007.

13. Defendant’s packaging for its “My Hold Right Pencil” brand pencils is confusingly similar to Plaintiff’s distinctive, triangular packaging used for its “CrayAngle” brand triangular crayons.

14. Plaintiff has sold its “CrayAngle” brand triangular crayons in the distinctive, triangular packaging in New York.

15. Defendant has sold its “My Hold Right Pencil” brand pencils in the triangular packaging in the Southern District of New York.

**First Count
Trade Dress Infringement**

16. Plaintiff hereby incorporates the allegations of paragraph 1 through 14 as if stated fully herein.

17. Plaintiff's triangular packaging used for its "CrayAngle" brand triangular crayons constitutes protectible trade dress under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

18. Defendant has infringed Plaintiff's trade dress rights in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114.

19. Plaintiff has been and continues to be irreparably harmed by Defendant's infringement.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor Plaintiff:

- a. Awarding actual damages to Plaintiff in an amount to be determined;
- b. Awarding exemplary damages to Plaintiff in an amount equal to three times the actual damages and profits awarded;
- c. Ordering an accounting of Defendant's profits and awarding the amount of such profits to Plaintiff;
- d. Awarding Plaintiff its costs and attorneys' fees;
- e. Permanently enjoining Defendant from utilizing product packaging confusingly similar to Plaintiff's distinctive, triangular packaging;
- f. Requiring Defendant to undertake remediative action, to be approved by the Court, designed to correct the confusion caused by Defendant's use of its triangular packaing; and

g. Providing all other equitable relief that the Court deems just and proper.

Respectfully submitted,
Classy Kid, Inc.
by its attorney,



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Dated: December 11, 2007